

Message Text

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ACTION ARA-06

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C O N F I D E N T I A L LIMA 9453

LIMDIS

FOR ARA - WILLIAM ROGERS; L - MARK FELDMAN; EB - THOMAS ENDERS
TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE; COMMERCE - DAN
ARRILL; S/P - WINSTON LORD

E.O. 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA EXPROPRIATION - PRIVATE LUNCHEON
NOVEMBER 13

1. SUMMARY: INFORMAL LUNCHEON LED TO NEW ADVANCE TOWARD
AN INTERIM AGREEMENT TO RESUME SHIPPING WITHOUT ESCROW BUT
INSTEAD WITH LETTER PROPOSED BY MARCONA AS SUBSTITUTE. END
SUMMARY.

2. LUNCHEON, ATTENDED ON U.S. SIDE BY FISHLOW AND EINAUDI
AND ON PERUVIAN BY DEL LA PUENTE, BROUSSET AND DELGADO, BEGAN
VERY INFORMALLY IN ATMOSPHERE THAT WENT BEYOND MUTUAL RES-
PECT TO FEELING THAT ALTHOUGH PARTICIPANTS WERE REPRESENT-
ING DIFFERENT INTERESTS WHICH ESTABLISHED CLEAR LIMITS ON
THEIR CAPACITY TO COMPROMISE, ALL WERE FULLY COMMITTED TO
MAKE EVERY EFFORT TO BREAK IMPASSE CONFIRMED AT MEETING
WITH PRIME MINISTER THE PREVIOUS EVENING.

3. PERUVIANS HAD BEEN WORKING THAT MORNING ON VARIANTS
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OF A GOODFAITH FORMULA THAT COULD BRIDGE THE PERIOD UNTIL

THE COMPLETION OF THEIR AUDIT. IT WOULD BE INCLUDED IN PUBLIC COMMUNIQUE REPORTING ON PROGRESS OF TALKS. DISCUSSION QUICKLY TURNED, HOWEVER, TO FISHLOW'S PRESENTATION OF APPROACH AGREED TO EARLIER IN DAY WITH MARCONA, TO WIT, RESUMPTION OF ORE SHIPMENTS WITHOUT ANY REQUIREMENT OF AN ESCROW ACCOUNT, SUBSTITUTING INSTEAD A LETTER FROM MINPECO TO MARCONA INTERNATIONAL STATING DECISION TO MAKE ORE AVAILABLE FOR A PERIOD OF NINETY DAYS TO TRADITIONAL STEEL MILL CONSUMERS IN QUANTITIES AND AT FOB PRICES ESTABLISHED UNDER MARCONA CONTRACTS PREVIOUSLY IN FORCE.

4. PERUVIANS QUICKLY REALIZED THIS OFFERED WAY AROUND THEIR PREVIOUS OBJECTIONS TO ESCROW ACCOUNT. BROUSSET INSTANTLY UNDERSTOOD ECONOMICS OF MATTER, NOTING THAT THIS WOULD ENABLE MARCONA TO HAVE EARNINGS THAT WOULD SUPPLEMENT ANY SETTLEMENT RESULTING FROM PERUVIAN AUDIT PROCEDURES. (THIS WAS FIRST EXPLICIT INDICATION WE HAD RECEIVED THAT PERUVIANS HAD UNDERSTOOD POINT THAT THEIR BOOK VALUE PROCEDURES IN THEMSELVES WERE UNLIKELY TO PRODUCE A SETTLEMENT ACCEPTABLE TO MARCONA.)

5. PERUVIANS AGREED THAT EARLY RESUMPTION OF SHIPPING WOULD FACILITATE PERUVIAN REENTRY INTO WORLD ORE MARKET, AND THAT ABSENCE OF ESCROW PROVISION WOULD GIVE GOP FULL USE OF FOREIGN EXCHANGE EARNINGS. THEY ALSO NOTED THAT 90-DAY PERIOD ACCOMPLISHED TWO THINGS: LEFT PERU FREE TO ATTEMPT TO NEGOTIATE ITS OWN NEW CONTRACTS TO REPLACE EXPIRING MARCONA CONTRACTS, WHILE ALSO ENABLING PERU TO CONSULT WITH MARCONA ON PROCEDURES BEST SUITED TO MAINTAIN PRODUCTION AND MARKETS.

6. PERUVIANS ALSO QUICK TO SEE THAT THIS PROPOSAL HAD POTENTIAL OF REVERSING POLITICAL DYNAMICS OF THEIR INVOLVEMENT IN THE ORE BUSINESS. THE JAPANESE, WHO HAD HERETOFORE BEEN ABLE TO WATCH MARCONA AND PERU FIGHT, WAITING TO PICK UP THE PIECES IN A WAY THAT WOULD BE MOST ADVANTAGEOUS TO JAPAN BUT NOT NECESSARILY TO PERU, WOULD NOW BE PUT IN A POSITION OF IN EFFECT TRANSFERRING FUNDS TO MARCONA. MEANWHILE, MARCONA, WHICH PREVIOUSLY HAD BEEN IN A POSITION OF EXERTING MAXIMUM PRESSURE ON PERU WOULD NOW BE PUT IN A CONFIDENTIAL

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POSITION OF ASSISTING PERU TO REESTABLISH SALES AND PRODUCTION AS A MEANS OF DERIVING MAXIMUM ADVANTAGES FOR MARCONA AS WELL.

7. FISHLOW CAREFULLY EXPLAINED THAT THIS LATEST INNOVATION HAD NOT BEEN EASY FOR U.S. SIDE TO OBTAIN; THAT IT WAS STILL CRITICAL FOR PERUVIAN AUDIT TO PROVIDE BEST POSSIBLE TERMS FOR MARCONA; AD THAT AN EARLY TEST OF PERUVIAN GOOD

FAITH WOULD BE FOUND IN RESPONSE OF TAX AUTHORITIES TO MARCONA REJECTION OF FEBRUARY 1975 TAX CLAIMS. SOME RESISTANCE WAS ENCOUNTERED ON THIS SCORE, AS BROUSSET INDICATED THAT FOUR PERCENT COMMISSION WAS NOT ONLY CONTRADICTORY TO LEGAL MAXIMUM OF TWO PERCENT, BUT IN EFFECT CONSTITUTED A HIDDEN TRANSFER PAYMENT, SINCE THE SALES INVOLVED WERE AMONG SUBSIDIARIES OF A SINGLE MULTINATIONAL. U.S. SIDE QUESTIONED VALIDITY OF THIS LINE OF ARGUMENT AND HELD FIRM.

8. PERUVIANS CLEARLY FOUND THIS LATEST OFFER ACCEPTABLE, AND SET ABOUT ATTEMPTING TO OBTAIN POLITICAL APPROVAL WHILE NEGOTIATING OVER SPECIFIC LANGUAGE OF THE MEMORANDUM OF UNDERSTANDING (TEXT AS REPORTED IN LIMA 9351) ON BASIS OF TELEPHONE CONVERSATION WITH MINISTERS OF COMMERCE AND FOREIGN AFFAIRS, DE LA PUENTE TOLD US HIS GROUP WOULD BE MEETING AT 5:00 P.M. WITH PRIME MINISTER AND SEVERAL ADDITIONAL MINISTERS, AND ASKED OUR GROUP TO STAND BY FOR A MEETING LATER IN THE EVENING WITH FULL PERUVIAN COMMISSION TO FINALIZE AGREEMENT. WE MADE CLEAR THAT NO INITIALING WOULD BE POSSIBLE WITHOUT WASHINGTON CONCURRENCE.

8. COMMENT: THIS IS SECOND TIME WE HAVE APPEARED CLOSE TO AN INTERIM AGREEMENT. GOP MUST REALIZE EFFECT OF A NEW REJECTION NOT ONLY ON MORALE OF ITS OWN COMMISSION, BUT ON U.S. SIDE AND MOST IMPORTANTLY ON U.S. VIEW OF GOOD FAITH OF PERUVIAN NEGOTIATIONS. WE ARE WAITING.
DEAN

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